

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HECKLER ELECTRIC COMPANY,

Plaintiff,

v.

SELECT CONTRACTING, INC.

Defendant.

CIVIL ACTION NO. 08 cv 1594
(CM) (FM)

**ANSWER AND AFFIRMATIVE
DEFENSES OF DEFENDANT, SELECT
CONTRACTING, INC.**

Defendant Select Contracting, Inc. ("Select Contracting") by and through its counsel, Pashman Stein, a Professional Corporation, by way of Answer to the Complaint filed by Plaintiff, Heckler Electric Company, says:

AS TO NATURE OF ACTION

1. Select Contracting is without knowledge or information sufficient for it to form a belief as to the truth of the allegations contained in paragraph 1 of plaintiff's complaint.

AS TO JURISDICTION AND VENUE

2. As plaintiff's complaint does not contain a paragraph 2, no response is necessary.

3. As plaintiff's complaint does not contain a paragraph 3, no response is necessary.

4. Select Contracting admits that it is a New Jersey Corporation with a principal place of business at 420 Veterans Highway in Carlstadt, New Jersey. Select

Contracting is without knowledge or information sufficient for it to form a belief as to the truth of the remaining allegations contained in paragraph 4 of plaintiff's complaint.

5. Select Contracting is without knowledge or information sufficient for it to form a belief as to the truth of the allegations contained in paragraph 5 of plaintiff's complaint.

6. Select Contract admits that plaintiff's allegations are based upon events that occurred in part in the Southern District of New York. Select Contracting is without knowledge or information sufficient for it to form a belief as to the truth of the remaining allegations contained in paragraph 6 of plaintiff's complaint.

7. Select Contracting is without knowledge or information sufficient for it to form a belief as to the truth of the allegations contained in paragraph 7 of plaintiff's complaint.

8. Select Contracting admits the allegations contained in paragraph 8 of plaintiff's complaint.

9. Select Contracting denies the allegations contained in paragraph 9 of plaintiff's complaint.

10. Select Contracting admits the allegations contained in paragraph 10 of plaintiff's complaint.

11. Select Contracting admits the allegations contained in paragraph 11 of plaintiff's complaint.

12. Select Contracting admits to entering into contracts with Plaintiff for some, but not all, of the "Exhibitions" identified in Plaintiff's complaint. Select Contracting denies the remaining allegations contained in paragraph 12 of plaintiff's complaint.

AS TO COUNT I

13. Defendants repeat and reiterate each and every response to paragraphs 1 through 12 as if set forth fully herein.

14. Select Contracting denies the allegations contained in paragraph 14 of plaintiff's complaint.

15. Select Contracting denies the allegations contained in paragraph 15 of plaintiff's complaint.

16. Select Contracting denies the allegations contained in paragraph 16 of plaintiff's complaint.

17. Select Contracting denies the allegations contained in paragraph 17 of plaintiff's complaint.

18. Select Contracting denies the allegations contained in paragraph 18 of plaintiff's complaint.

AS TO COUNT II

19. Defendant repeats and reiterates each and every response to paragraphs 1 through 18 as if set forth fully herein.

20. Select Contracting admits to entering into contracts with Plaintiff for some, but not all, of the "Exhibitions" identified in Plaintiff's complaint. Select Contracting denies the remaining allegations contained in paragraph 20 of plaintiff's complaint.

21. Select Contracting denies the allegations contained in paragraph 21 of plaintiff's complaint.

22. Select Contracting denies the allegations contained in paragraph 22 of plaintiff's complaint.

23. Select Contracting denies the allegations contained in paragraph 23 of plaintiff's complaint.

24. Select Contracting denies the allegations contained in paragraph 24 of plaintiff's complaint.

AS TO COUNT III

25. Defendant repeats and reiterates each and every response to paragraphs 1 through 24 as if set forth fully herein.

26. Select Contracting admits receiving invoices from plaintiff. Select Contracting denies the remaining

allegations contained in paragraph 26 of plaintiff's complaint.

27. Select Contracting denies the allegations contained in paragraph 27 of plaintiff's complaint.

28. Select Contracting denies the allegations contained in paragraph 28 of plaintiff's complaint.

29. Select Contracting denies the allegations contained in paragraph 29 of plaintiff's complaint.

30. Select Contracting denies the allegations contained in paragraph 30 of plaintiff's complaint.

WHEREFORE, Select Contracting denies that plaintiff is entitled to any damages, including the relief sought, and respectfully requests that the Court enter judgment in its favor and against plaintiff, dismissing his entire Complaint and such other relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of estoppel, waiver and laches, and legal and equitable fraud.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands and general equitable principles.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of accord and satisfaction.

FIFTH AFFIRMATIVE DEFENSE

Defendants did not breach an agreement with plaintiff.

SIXTH AFFIRMATIVE DEFENSE

The damages alleged were caused by and are the sole responsibility of plaintiff or of third parties over whom the defendant has no administration or control.

SEVENTH AFFIRMATIVE DEFENSE

The damages alleged were caused by superseding and intervening acts and/or the negligence of plaintiff.

NINTH AFFIRMATIVE DEFENSE

Plaintiff did not perform in accordance with its contractual obligations.

TENTH AFFIRMATIVE DEFENSE

Plaintiff is seeking payment for services that were never authorized.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff is barred from the claims herein as plaintiff billed and was paid therefor.

Dated: Hackensack, New Jersey
March 7, 2008

By: s/Samuel J. Samaro
SAMUEL J. SAMARO
ssamaro@pashmanstein.com

PASHMAN STEIN
A Professional Corporation
Court Plaza South
21 Main Street
Hackensack, New Jersey 07601
Tel.: (201) 488-8200
Attorneys for Defendant,
Select Contracting, Inc.